

NATIONAL CANNERS ASSOCIATION INFORMATION LETTER

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June 27, 1931

STATEMENT OF NET CONTENTS OF CANNED FOODS

The general notice recently issued by the Department of Agriculture regarding the proper declaration of the net contents of food in package form has brought up the question of the proper statement of the net contents on labels for canned foods.

A statement of the net contents is the one positive requirement of the Federal Food and Drugs Act for every canned food label. If there are other statements on the label they must also be true to fact, but a correct statement of the net contents is required.

The wording of the law in this matter is plain and direct. The statement must be plain, it must be conspicuous, it must be correct. In order to be "plain" the statement must be in the simplest expressions of quantity commonly used with that food product. For most canned foods the net weight should be stated in pounds and avoirdupois ounces. In general, free-flowing liquids should be declared in liquid measure. The metric system of weights and measures is legal in this country, but it is not yet familiar to a large proportion of canned foods purchasers, and if a canner wants to use the metric system he should also put on his label an adequate statement in the usual English units. The complete statement "Net Contents ——" is preferred, although abbreviations are permitted.

The statement of net contents should be an important and conspicuous part of every label. The Food and Drug officials do not suggest that it should be the most conspicuous statement on the label, but the law does require that it shall be plainly visible to anyone reading the principal part of the label. The last paragraph of the recent notice by the Department of Agriculture should be studied carefully by all canners.

"Type of adequate size" means in proportion to the size of the label and the size of the other printed matter on the label. The style of letters and figures used should be chosen from those that are easily seen and read.

"On a contrasting background" refers to the color of the background in relation to the color of the ink used in printing the net contents declaration. This also requires that the back-

ground shall be all of one solid color and not confused by vignettes or pictorial designs.

"Properly separated from other statements and designs" includes the necessity for making the declaration as one continuous statement without intervening designs, statements, or large spaces.

The statement of the net contents must be on the display panel and if the label is designed to have more than one display panel, the declaration should appear on each. This means that the declaration of the net contents on the side of the can between two display panels will not be satisfactory. The net contents should be stated in connection with the name of the food product in the can rather than with other information such as the firm name or the place of manufacture.

Because it takes considerable time to have labels prepared, many canners have on hand a large supply for the coming season. Where the statement of net contents is decidedly inconspicuous or is not correct, the labels should be changed before they are used.

When the net contents is plainly and correctly stated in the conventional form so long prevailing in the canning industry it will be unnecessary to scrap the labels for the current canning season, but all new labels should be designed to comply with all of the requirements given in the recent announcement.

The requirements for the proper statement of the net contents as stated in the recent notice are not new or different from those which have always guided the Food and Drug officials in their work. They have observed a tendency on the part of certain food industries to lose sight of the requirements of the net weight amendment in designing labels for their products, and the general notice has been issued as a warning that full compliance with the intent of the law will be required.

ACREAGE AND CONDITION OF CORN FOR CANNING

The preliminary estimate of the Department of Agriculture of acreage of sweet corn planted for canning or manufacture in 1931 is 348,380 acres, compared with 409,880 acres *planted* in 1930, of which 375,810 acres were *harvested*. The acreage planted this season represents a reduction of 7.3 per cent below the 1930 harvested acreage and 15 per cent below the 1930 planted acreage. Due to the effect of the drouth in some areas last year, abandonment of planted acreage was unusually heavy, amounting to 8.3 per cent of the total acreage planted. The 1931 estimate is based upon reports from canners representing

CONDITION OF CANNING CROPS

The Department of Agriculture on June 27 issued the following figures on the condition, on June 15, of cabbage for kraut, cucumbers for pickles, tomatoes, green lima beans and beets:

		June 15				June 15	
		1931	1930			1931	1930
CABBAGE FOR KRAUT		Pct.	Pct.	TOMATOES (Cont'd)		Pct.	Pct.
New York	82	92		Ohio	85	87	
N. Atlantic	82	92		Indiana	85	88	
Ohio	88	90		Illinois	90	91	
Indiana	88	95		Michigan	86	80	
Illinois	92	80		Iowa	87	91	
Michigan	95	97		Missouri	77	87	
Wisconsin	87	92		N. Central	83.8	87.8	
Minnesota	a	80		Delaware	85	79	
N. Central	89	91.5		Maryland	84	84	
Colorado	90	77		Virginia	85	80	
Washington	77			S. Atlantic	84.3	82.3	
Far Western	86.3	77		Kentucky	85	84	
Other b	84	92		Tennessee	76	80	
U. S. average	86.1	91.4		Mississippi	76		
CUCUMBERS FOR PICKLES				Arkansas	63	86	
Massachusetts	a			S. Central	70.6	86	
New York	88	92		Colorado	92	92	
N. Atlantic	88	92		Utah	88	92	
Ohio	77	87		California	93	90	
Indiana	81	86		Far Western	91.9	90.3	
Illinois	82	81		Other b	75	86	
Michigan	85	86		U. S. average	83.5	87.5	
Wisconsin	87	88		GREEN LIMA BEANS			
Minnesota	87	90		Delaware	78	92	
Iowa	87	89		Maryland	85	75	
Missouri	90			Michigan	72	a	
N. Central	84.8	86.8		Minnesota	85	96	
Maryland	a			New Jersey	a	88	
Virginia	95			Ohio	82	71	
S. Atlantic	95			Utah	a		
Kentucky	a			Virginia	85	90	
Mississippi	30			Other b	73	75	
Louisiana	30	80		U. S. average	78.9	86	
Texas	62			BEETS			
S. Central	39.4	80		Colorado	90	98	
Colorado	92	88		Indiana	92	88	
Washington	84	76		Michigan	82	92	
Oregon	90			New Jersey	85	78	
California	92	83		New York	90	99	
Far Western	91	84.3		Ohio	94	15	
Other b	90	77		Oregon	53	79	
U. S. average	80.1	86.3		Utah	93	98	
TOMATOES				Washington	85	98	
New York	88	89		Wisconsin	86	77	
New Jersey	85	93		Other b	78	91	
Pennsylvania	87	87		U. S. average	80.5	86.6	
N. Atlantic	85.9	91.5					

a No report.

b Other states for cabbage include Arkansas, Iowa, Maryland, Missouri, Montana, Nebraska, Oregon, Pennsylvania, Tennessee, Utah, Virginia; for cucumbers, Connecticut, Delaware, Florida, Nebraska, North Carolina, Pennsylvania, South Dakota, Utah, Wyoming; for tomatoes, Connecticut, Kansas, Louisiana, Nebraska, New Mexico, Oklahoma, Oregon, South Carolina, Texas, Washington, West Virginia, Wisconsin; for lima beans, Arkansas, Colorado, Georgia, Illinois, Indiana, New York, Pennsylvania, South Carolina, Tennessee, Utah, Wisconsin; for beets, Delaware, Iowa, Kentucky, Maryland, Minnesota, Mississippi, Pennsylvania, South Carolina, Tennessee, Virginia.

88 per cent of the total acreage grown in 1930, and assumes that the remaining 12 per cent will show the same change as the acreage represented by those canners reporting.

Firms reporting their 1931 acreage by variety classification gave a total of 229,669 acres, of which 184,760 acres consisted of white varieties and 44,909 acres of yellow varieties. If these totals are representative of the whole acreage, the 1931 planted acreage consists of 80 per cent white varieties and 20 per cent yellow varieties.

The following table gives, by States, the total estimated acreages planted in 1931 compared with the acreages planted in 1930 and harvested during the years 1928 to 1930, inclusive.

State	Harvested			Planted		Condition June 15 Pet.
	1928 Acres	1929 Acres	1930 Acres	1930 Acres	1931 Acres	
Maine	10,770	14,850	13,200	13,440	10,700	78
New Hampshire	1,110	1,320	1,050	1,110	900	(a)
Vermont	1,940	2,370	2,100	2,200	1,100	(a)
New York	27,000	24,000	23,000	26,200	17,000	86
Pennsylvania	4,140	6,000	6,300	7,500	5,600	84
Ohio	27,910	31,000	32,500	38,000	30,000	90
Indiana	27,390	38,500	43,500	44,300	37,200	88
Illinois	58,300	64,000	72,000	75,000	68,300	88
Michigan	8,930	6,400	7,300	12,400	8,200	71
Wisconsin	14,780	11,000	13,000	14,500	13,000	85
Minnesota	33,000	45,800	54,000	54,300	46,200	86
Iowa	39,800	50,000	55,000	55,000	51,200	92
Nebraska	5,470	5,740	8,000	8,500	7,800	91
Delaware	4,060	3,900	3,630	3,700	3,100	85
Maryland	35,500	44,000	34,000	46,200	39,700	88
Tennessee	3,100	3,400	3,400	3,400	3,400	80
Other States ^b	2,700	3,380	3,830	4,130	3,780	85
U. S. total	305,900	356,800	375,810	400,880	348,380	87.4

^a No report.

^b "Other States" include: Colorado, Idaho, Kentucky, Missouri, Montana, Oregon, South Dakota, Washington and Wyoming.

FORECAST OF GREEN PEAS FOR CANNING

The Department of Agriculture forecast of production of green peas for canning or manufacture in 1931, based upon the reported condition of the crop on June 15, is 6½ per cent smaller than the estimated production in 1930. The estimate of acreage planted in 1931 represents a reduction of 7 per cent below the acreage *harvested* and 11 per cent below the acreage *planted* in 1930. The indicated average yield per acre on the total acreage is 1,847 pounds for 1931 compared with 1,837 pounds in 1930 and with a 5-year average of 1,876 pounds for the period 1925 to 1929.

From present indications, production in New York and the Far Western States will be considerably below last year's production. In the Middle Western group of States, consisting of Ohio,

Indiana, Illinois, Michigan, Wisconsin and Minnesota, the total production in prospect is 2 per cent below that of last year. Areas showing material increases are Pennsylvania, New Jersey, Delaware, Maryland and Tennessee, where the 1930 crop was severely damaged by the drouth.

Since the outcome of the crops in Wisconsin, Minnesota, Michigan, New York and other northern areas will depend much upon the weather for the next few weeks, this forecast of production as of June 15 conditions is necessarily subject to change, and the final outcome may be either greater or less than the present indications.

State	Acreage		Condition, June 15		Production	
	1930	1931	1930	1931	1930	1931
	Acres	Acres	Pct.	Pct.	1,000 lbs.	1,000 lbs.
Maine	1,330	1,400	..	98	2,992	2,520
New York	34,440	33,800	96	81	75,768	53,404
New Jersey	500	550	49	78	250	940
Pennsylvania	2,010	1,950	34	77	1,809	3,998
Ohio	5,410	5,950	36	81	4,598	9,520
Indiana	6,270	6,270	63	87	13,857	11,600
Illinois	12,660	13,550	80	94	27,852	24,390
Michigan	11,000	12,240	89	82	22,037	17,748
Wisconsin	127,000	116,000	79	85	229,870	229,680
Minnesota	17,900	17,180	82	86	30,967	30,065
Delaware	3,200	2,800	33	74	1,056	4,564
Maryland	13,000	13,260	28	72	7,150	23,868
Tennessee	1,400	1,400	..	90	1,200	2,520
Montana	3,500	2,650	68	80	8,190	5,512
Colorado	3,700	3,770	83	78	6,727	6,220
Utah	13,070	6,540	92	77	35,942	14,388
Washington	2,100	1,870	100	80	5,250	3,890
California	950	1,000	..	83	2,508	2,200
Other States ^b	3,700	3,320	71	85	6,475	6,474
U. S. total ..	263,800	245,500	77.8	83.6	494,558	453,501

^a Revised.

^b "Other States" include Idaho, Iowa, Kansas, Virginia, and Wyoming.

ACREAGE OF SNAP BEANS FOR CANNING REDUCED

The preliminary estimate of the Department of Agriculture of the acreage of snap beans for canning or manufacture is 55,960 acres, compared with 74,390 acres harvested in 1930 and with a 5-year average of 38,800 acres for the period 1925-1929. The 1931 estimate of planted acreage represents a reduction of 25 per cent below the acreage grown for harvest in 1930. It is based upon reports from cannerymen representing 80 per cent of the acreage grown in 1930, and assumes that the remaining 20 per cent will show the same change as the acreage represented by those cannerymen reporting.

Firms reporting their 1931 acreage by variety classification gave a total of 26,863 acres, of which 20,947 acres consisted of green beans and 5,916 acres of wax beans. If these totals

are representative of the whole acreage, 78 per cent of the 1931 acreage consists of green beans and 22 per cent of wax beans.

The following table gives, by states, the total estimated acreages planted in 1931 compared with acreages harvested from 1927 to 1930.

State	Harvested				Planted	Condi- tion
	1927	1928	1929	1930	1931	June 15
	Acres	Acres	Acres	Acres	Acres	Pct.
Maine	600	970	1,300	1,300	1,000	98
New York	5,530	6,840	9,800	11,270	7,400	85
Pennsylvania	800	1,190	2,720	3,450	2,800	85
Indiana	850	1,800	3,500	3,710	3,500	85
Michigan	2,400	2,950	5,300	5,900	5,800	78
Wisconsin	3,910	4,000	7,400	9,000	7,500	85
Delaware	400	670	2,200	2,300	2,550	82
Maryland	3,300	4,360	8,400	9,740	7,600	85
South Carolina	700	700	870	1,400	700	53
Tennessee	1,250	1,220	2,000	2,450	2,130	60
Mississippi	1,780	1,690	1,800	2,640	1,720	60
Arkansas	880	1,790	2,240	3,000	2,380	65
Louisiana	1,640	3,040	2,530	3,500	1,500	57
Colorado	900	1,600	2,300	2,100	940	95
Utah	880	1,020	1,280	1,280	200	93
Washington	370	700	820	940	750	90
Oregon	650	650	930	800	400	90
California	450	470	960	770	640	91
Other States ^a	1,540	3,010	5,550	8,750	6,450	80
U. S. total	28,920	39,270	61,960	74,390	55,960	80.6

^a "Other States" include Alabama, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Missouri, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Texas, Vermont, Virginia, and West Virginia.

WEATHER CONDITIONS

While cooler weather prevailed west of the Rocky Mountains early in the week ended June 23 much higher temperatures were experienced in the Northwest, with maximum readings 100 degrees or higher over considerable areas. The latter part of the period had much cooler weather in the Northwest, but it continued warm over central and eastern portions of the country.

The outstanding feature of the week's weather was the moderate to heavy rain over much of the northwestern area of the country where severe drought had prevailed. The rainfall of the week, in conjunction with that in the Pacific Northwest just previous, has afforded substantial relief in Washington, Oregon, northern Idaho, western and southeastern Montana, and most of North Dakota. In addition, the moisture situation is now rather markedly improved in much of South Dakota, and more generally in Minnesota, Wisconsin and Iowa.

In the central valleys recent rainfall has been very spotted. Many localities had good showers, but others were largely missed, and generous, widespread rains would be very beneficial. In general, crops are not suffering, and growth, under the influence of

warm weather, especially in the shower areas, has been rapid. In the south rainfall was again spotted and many places are in need of moisture, especially from western North Carolina and Tennessee southward, including about one-half of Kentucky; about two-thirds of Georgia is experiencing rather severe drought. However, a fair distribution of local showers has been helpful in the lower Mississippi Valley and eastern Texas. Conditions in the Middle and North Atlantic states continue favorable, but a few localities in the Virginias are needing moisture for some crops.

REVISED PROCESSING BULLETIN DISTRIBUTED

Copies of Bulletin No. 26-L, revised, "Processes for Non-Acid Canned Foods," is being mailed to members of the Association. This bulletin, the first edition of which was published in January, 1930, contains such revisions and additions as experimental work has shown to be advisable. It is suggested that when the revised edition is received the first edition be discarded. Any member failing to receive his copy of the new bulletin should advise the Association at once.

RETAIL BUSINESS EXCEEDS \$53,000,000,000 ANNUALLY

Census of Distribution figures show that annual sales through retail stores in the United States amount to approximately \$50,000,000,000, while total retail sales through all channels exceed \$53,000,000,000, the \$3,000,000,000 being accounted for by direct sales of manufacturers and other producers.

The census figures show that there are 1,549,000 retail stores in the 48 States and the District of Columbia, or 12.6 per 1,000 inhabitants, and that the average store does an annual business of \$32,297. The average per capita purchases at retail amount to \$407.52, which indicates average retail purchases per family (of three to five persons) of from \$1,250 to \$2,000 annually. However, the retail store purchases of the several states varies greatly, from a minimum of \$172 per capita in South Carolina to a maximum of \$575 in California and New York. These figures are based on a field canvass during 1930 of every city, town, and rural area in the United States, and reflect the retail business of the year 1929. They cover all stores, restaurants, filling stations, and other retail establishments, except strictly service businesses.

The figures show that the average number of stores per 1,000 inhabitants in the several states varies from a minimum of 8.1 in Alabama to a maximum of 15 and more in California and other states, and the average sales per store range from \$19,827 in South Carolina to \$39,715 in Michigan.

State	Number of Stores	No. Stores per 1,000 Inhabitants	Net Annual Sales (1929)	Per Capita Sales
Alabama	21,432	8.1	\$524,472,335	\$198.19
Arizona	5,044	11.6	192,418,746	441.70
Arkansas	18,040	9.7	411,494,753	221.89
California	80,025	15.1	3,268,545,636	575.73
Colorado	14,063	13.6	497,852,191	489.65
Connecticut	22,065	13.7	764,571,044	475.80
Delaware	3,023	15.2	99,194,007	416.12
District of Columbia	5,917	12.1	331,873,844	681.05
Florida	22,411	15.3	497,001,105	338.92
Georgia	28,768	9.9	617,543,956	212.32
Idaho	4,947	11.1	169,471,843	389.81
Illinois	97,074	12.7	3,687,370,356	483.23
Indiana	41,790	12.9	1,229,294,386	379.59
Iowa	32,991	13.4	976,154,704	395.05
Kansas	20,020	13.8	798,599,763	424.56
Kentucky	27,267	10.4	592,008,879	229.43
Louisiana	23,405	11.1	470,018,825	223.65
Maine	11,090	14.0	300,934,858	388.67
Maryland	21,129	13.0	613,812,177	376.22
Massachusetts	53,855	12.7	2,058,887,788	484.40
Michigan	56,290	11.6	2,235,570,800	461.67
Minnesota	31,027	12.1	1,071,787,582	418.02
Mississippi	17,331	8.6	413,858,201	203.92
Missouri	47,216	13.0	1,490,146,846	419.58
Montana	6,996	13.0	240,082,195	446.58
Nebraska	18,350	13.3	599,630,250	435.16
Nevada	1,312	14.4	50,088,632	550.06
New Hampshire	6,514	14.0	181,500,859	390.08
New Jersey	60,203	14.9	1,851,405,393	458.12
New Mexico	4,204	9.9	120,855,221	285.50
New York	189,921	15.1	7,239,632,514	575.12
North Carolina	28,058	9.1	744,136,243	234.72
North Dakota	8,131	11.9	232,810,484	341.94
Ohio	84,042	12.6	3,056,748,364	459.80
Oklahoma	27,490	11.5	793,869,223	331.33
Oregon	14,640	15.3	460,170,647	482.50
Pennsylvania	136,518	14.2	4,039,555,807	419.42
Rhode Island	9,488	13.8	316,573,174	460.47
South Carolina	15,082	8.7	290,037,807	171.98
South Dakota	8,990	13.0	262,148,879	378.96
Tennessee	23,498	9.0	649,857,182	248.36
Texas	67,258	11.5	2,074,164,554	356.10
Utah	5,291	10.4	200,041,805	393.90
Vermont	5,160	14.4	152,074,734	422.89
Virginia	20,222	10.8	596,784,564	246.42
Washington	22,399	14.2	774,340,348	405.29
West Virginia	17,283	10.0	442,119,101	255.68
Wisconsin	39,612	13.5	1,232,338,677	419.73
Wyoming	2,955	13.1	101,399,360	449.53
Total	1,549,168	12.6	\$50,033,850,792	\$407.53

TRUCK CROP MARKETS

Total forwardings of 39 products increased to 23,860 cars during the week ended June 20, or almost 4,000 more than during the same period last summer, according to the weekly report of the Market News Service. Part of this difference is accounted for by differences in the time of maturity of crops. Shipments of potatoes totaled 6,280 cars, watermelons, 3,735 cars, and

tomatoes, 2,760 cars, while movement of cantaloupes and similar melons reached the high mark of 3,580 cars.

Shipments of snap beans decreased to 380 cars, chiefly from Virginia, Maryland, and Tennessee. Cabbage required only 390 cars last week; Ohio and Virginia were the leading sources. Forwardings of cucumbers increased to 385, almost entirely from the Carolinas. Alabama green-corn shipments totaled 160 cars, while Texas decreased to 125. The corn season opened in Louisiana and Mississippi, making a total movement of 305 cars.

CARLOT SHIPMENTS

Commodity	June 14-20 1931	June 7-13 1931	June 15-21 1930	Total this sea- son thru June 20	Total last sea- son thru June 21	Total last season
Apples:						
1931 season.....	68	14	100	86	190	109,450
1930 season.....	149	230	141	109,450	102,090	102,801
Asparagus.....	25	31	24	3,675	2,725	2,780
Beans, snap and lima	380	418	439	7,607	8,201	9,559
Beets.....	13	28	...	1,480
Blackberries, dewber- ries, loganberries..	47	11	...	59
Cabbage.....	390	591	297	18,043	15,790	38,306
Carrots.....	72	233	138	8,400	9,129	12,355
Cauliflower.....	16	7	13	24	22	9,587
Cherries.....	132	119	331	1,284	1,404	2,581
Corn, green.....	305	300	...	1,311
Cucumbers.....	385	355	684	3,570	4,779	7,661
Mixed deciduous fruit	102	117	234	531	469	5,901
Mixed vegetables....	302	548	464	17,887	18,186	31,043
Peaches.....	515	242	747	800	1,215	35,461
Pears.....	112	13	13	126	15	28,828
Peppers.....	140	121	146	2,066	1,744	2,794
Peas, green.....	136	131	90	4,755	3,730	6,900
Plums and prunes...	458	620	543	1,768	1,451	8,712
Spinach.....	2	2	1	9,301	9,381	9,636
Strawberries.....	141	813	67	14,582	11,521	11,834
Tomatoes.....	2,758	1,884	1,068	13,620	16,318	33,511

TOMATO JUICE DEFINITION ANNOUNCED

Canned tomato juice is among the articles for which new definitions and standards have been adopted by the Department of Agriculture; other articles are dextrose and whole wheat bread. Revised definitions have also been adopted for white bread, raisin bread, Boston brown bread, and sorghum sirup. The definition for canned tomato juice is as follows:

Canned tomato juice is the unconcentrated, pasteurized product, consisting of the liquid, with a substantial portion of the pulp, expressed from ripe tomatoes, with or without the application of heat; and with or without the addition of salt.

These definitions and standards were recommended by the Food Standards Committee, which is composed of representatives of the Association of Dairy, Food and Drug Officials of the

United States, of the Association of Official Agricultural Chemists, and of the U. S. Department of Agriculture. They are adopted for the guidance of state and federal food officials, and are not standards under the McNary-Mapes law.

BUSINESS INDICATORS

(Weeks ended Saturday, weekly average 1923-1925=100)

	1931			1930		
	June 20	June 13	June 6	June 21	June 14	June 7
General business:*						
New York Times.....		74.2	a75.9	90.9	92.1	93.1
Business Week.....		77.9	a78.1	94.7	89.5	91.3
Freight car loadings.....		70.4	79.4	90.0	90.6	97.6
Wholesale prices (Fisher's):						
All commodities.....	70.0	69.7	70.0	86.2	87.0	87.6
Agricultural products.....	61.4	66.4	60.4	88.8	90.0	91.2
Nonagricultural products.....	72.8	73.0	73.2	84.6	85.1	85.4
Bank debits outside New York City.....	100.7	89.2	101.3	134.9	114.9	107.9
Bond prices.....	106.1	105.8	105.1	106.4	106.4	106.4
Stock prices.....	130.0	130.8	123.8	107.7	216.1	230.0
Interest rates:						
Call money.....	36.4	36.4	36.4	60.6	68.6	72.7
Time money.....	34.3	34.3	34.2	81.8	85.7	85.7
Business failures.....	114.7	116.5	111.5	119.7	120.1	119.2

* Relative to a computed normal taken as 100.

a Revised.

CAR LOADINGS

	CAR LOADINGS		Merchandise	
	Total	Miscellaneous	L. C. L.	Other
Week ended June 13.....	732,453	294,619	218,710	219,124
Preceding week.....	760,890	306,824	223,967	230,099
Corresponding week, 1930.....	926,066	366,416	243,045	316,605
Corresponding week, 1929.....	1,069,670	430,016	261,619	378,035

REVIEW OF MULTIPLE SEIZURE DECISION

The following review of the opinion of the Court of Appeals of the District of Columbia in the "multiple seizure" case, decided on June 1, has been prepared by Mr. Spencer Gordon of counsel for the Association:

In *National Remedy Co. v. Hyde et al.*, decided June 1, 1931, the Court of Appeals of the District of Columbia held that "multiple seizures" under the Food and Drugs Act could be enjoined where such seizures threatened irreparable injury to the manufacturer's business if the products seized were not of such character as to endanger the public.

The plaintiff had been the manufacturer since 1913 of "B. & M. External Remedy," distributing it throughout the United States. In 1922, after previous hearings in the Department of Agriculture, the Department caused seizures of the remedy to be made under libels filed in various jurisdictions. Jury trial was had on one libel, the Government contending that advertising of the remedy was false and fraudulent. A verdict was rendered and judgment entered for the Remedy Company, and the other libels were apparently dismissed. No further action was taken for six years, although the identical remedy with substantially the same advertising has been from that time and now is continuously sold and distributed in interstate commerce.

In December, 1928, and January, 1929, the Department of Agriculture caused identical libels to be filed and seizures made of the remedy in seven named cities, charging adulteration and misbranding. The plaintiff in the present case alleged that the defendants will cause further libels to be instituted unless restrained. It further alleged that the remedy is solely for external use, that it is not adulterated and statements concerning it are not false, that if other seizures are made plaintiff's entire output could be tied up and its business destroyed. It asked an injunction restraining the Secretary of Agriculture, the Director of Regulatory Work, and the Chief of Drug Control of the Food, Drug, and Insecticide Administration, all made defendants, from causing further libels to be instituted until the pending libels are determined. The case came before the Court of Appeals on appeal from a decree of the Supreme Court of the District of Columbia sustaining defendant's motion to dismiss the bill.

The Court of Appeals in its opinion pointed out that the technical effect of a motion to dismiss is to admit all material facts alleged in the bill, that the remedy is for external use only, that it is the same remedy investigated by the Department prior to 1922 and not charged at that time to be adulterated. From these facts the Court assumed that the adulteration, if any, was not of such character as to endanger the public, and held that the "multiple seizures" sought to be restrained, which might ruin the manufacturer before any single libel could be determined, were not within the contemplation of Congress "except possibly in unusual cases where drastic action would be necessary for the immediate protection of the public." The Court further held that a court of equity had jurisdiction to restrain a multiplicity of suits which would cause such irreparable injury, and since under the facts admitted by the motion to dismiss the Remedy Company was entitled to the relief asked, the decree of the Supreme Court was reversed and the cause remanded for further proceedings not inconsistent with the opinion.

The fact that further proceedings are to be taken in the lower court does not detract from the importance of this decision. The decision apparently stands for the proposition that in the case of an article which is not inherently dangerous to the public, the distribution can not be stopped by multiple seizures, but the Government is required to test the question with only a reasonable number of seizures. The "further proceedings" contemplated in the court below apparently can only involve the question of whether or not the remedy is inherently dangerous.

Of course it must be understood that this decision by the Court of Appeals does not decide whether or not the particular remedy is inherently dangerous and does not decide whether or not the advertising was fraudulent and the remedy adulterated.

ASSOCIATION RESPONSIBLE ONLY FOR EXPENSES OF SUITS IT DEFENDS

Recently a member of the Association was asked by a retailer to defend a suit brought against the retailer involving canned foods packed by the member and sold by the retailer. The member, upon advice of his counsel, offered to undertake the defense of the suit through the National Cannery Association, but declined to assume responsibility for any judgment or

damages in advance of the trial. The retailer declined the offer and defended the suit with his own counsel. The retailer has now billed the member for expenses of the defense, and the member in turn has asked the Association to take care of them.

The Association will not be responsible for lawyers' fees or expenses in any case except where the Association engages the lawyer to defend the case and has direct control over the other incidental expenses. To remind Association members of just what this service covers, the following paragraphs are quoted from Information Letter No. 335, dated December 7, 1929:

1. The Association will continue to investigate all consumer complaints involving canned products of its members, and will pay the cost of such investigations.

2. The Association will find and engage lawyers to defend suits of this kind, whether the member is being sued directly or whether the suit is against the distributor or grocer who has sold the member's canned product involved in the suit; provided, however, that the general counsel of the Association believes the claim to be unjustified, and that it should be defended; and provided further, that the member requests the Association to defend the suit and that the canner agrees to pay any judgment that may be rendered against the party against whom the suit is brought.

3. The Association will pay the fees and necessary expenses of the lawyers engaged by it, bills for such service and expenses to be submitted directly to the Association.

4. The Association will engage the services and pay the fees and expenses of expert medical and bacteriological witnesses if such are considered necessary by the lawyer selected by the Association to handle the case.

5. The Association will pay all expenses for stenographic and commissioner's fees in taking depositions requested by the Association's lawyer. If these depositions are taken by lawyers engaged or authorized by the Association, the Association will also pay such lawyers' fees.

6. The Association does not commit itself to pay the expenses of officers or employees of the member or distributor involved, incurred in connection with the suit, nor the fees or expenses of witnesses except those authorized by the Association. Neither will the Association pay the fees of the member's regular counsel for services in connection with the suit, when such counsel is not regularly employed by the Association to defend the suit.

7. In no event is the Association to be in any way responsible for the outcome of the suit. The Association is not to pay

any judgment obtained or any part thereof, nor is it to be responsible to its member for any criticism which may arise regarding the way in which the suit has been handled.

IMPORTS OF CANNED TOMATOES AND TOMATO PASTE

Imports of canned tomatoes continue to be heavier than last year, receipts in May exceeding those of May, 1930, by about 1,500,000 pounds. Paste imports fell off sharply in May, bringing the receipts for the first five months below those of the corresponding period last year. The following table is compiled from figures issued by the Statistical Division of the Bureau of Foreign and Domestic Commerce:

1930	Canned Tomatoes		Tomato Paste	
	Pounds	Value	Pounds	Value
January	8,039,178	\$427,845	1,035,309	\$129,824
February	5,834,313	283,425	1,050,583	88,842
March	2,902,848	139,808	658,934	53,743
April	5,425,074	291,292	932,968	83,269
May	6,453,591	308,250	2,368,368	246,030
Total	29,555,004	1,450,620	6,646,222	602,306
1931				
January	5,611,727	198,377	796,143	62,736
February	7,375,831	235,570	873,380	75,763
March	7,000,827	243,760	907,242	66,645
April	9,932,380	364,172	1,642,420	149,068
May	8,092,003	280,368	953,333	68,233
Total	38,012,777	1,331,256	5,172,518	423,045

DISTRIBUTION OF PICNIC LEAFLET

The initial distribution of the leaflet, "Canned Foods Go A-Picnicking," copies of which have been mailed to member canners, includes about 5,500 copies, which have been sent to teachers and other workers in the home economics field, members of the Camp Directors' Association, and other organizations such as the Girl Scouts and the Camp Fire Girls.

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